

PATENT

Patent Application Serial No.: 10/724,833

Attorney Docket No.: 17357.01302US

In response to the Examiner's Restriction Requirement of the Office Action dated September 13, 2004, Applicants hereby elect Group I (claims 1-27 and 39-41) for examination, with traverse. Pursuant to the Examiner's Election of Species Requirement regarding a species of apolipoprotein and a species of therapeutic agents, Applicants hereby elect, with traverse, ApoE and a conjugate formed between cholesterol and an antibiotic, respectively.

Restriction is proper when two criteria are satisfied: 1) the claimed inventions are independent or distinct as claimed; and 2) a search of the claimed subject matter would impose a serious burden on the Examiner. (MPEP § 803). The conjugates of Group II (claims 28-33) are elements of claims 6 and 8 of Group I. A consequence of the Examiner's Election of Species Requirement regarding therapeutic agents and Applicants' election of a conjugate formed between cholesterol and an antibiotic, the conjugates of Group II are recited elements of the Group I invention. Consequently, a complete search of the artificial LDL particles of Group I must include a search of the conjugates of Group II. Thus, the search and/or examination of the claimed subject matter of Group I and Group II would not impose a serious burden. When the necessary element of a serious search burden has not been established, the MPEP states that "the Examiner must examine [the claimed invention] on its merits, even though it includes claims to independent or distinct inventions." MPEP § 803. Accordingly, Applicants respectfully request reconsideration and withdrawal of the outstanding restriction requirement between Groups I and II and examination of claims 1-33 and 39-41.

Applicants also respectfully traverse the Examiner's Election of Species Requirement, because the Examiner has not demonstrated that a search and/or examination of the apolipoprotein and therapeutic agent genres would impose a serious burden. The Examiner has not provided evidence sufficient to support a *prima facie* showing that a search and/or examination of the claimed invention would impose a serious burden. It is well established that a reasonable number of species may be claimed in one application. (See MPEP §806.04(a); 37 C.F.R. §1.141). Accordingly, Applicants respectfully request reconsideration and withdrawal of the outstanding election of species requirement.

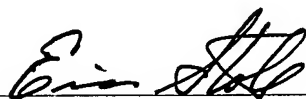
EXCEPT for issue fees payable under 37 C.F.R. § 1.18, the Director is hereby authorized by this paper to charge any additional fees during the entire pendency of this application, including fees due under 37 C.F.R. §§ 1.16 and 1.17 which may be required, including any required extension of time fees, or credit any overpayment to Deposit Account No. 13-3250, reference No. 02012.4121. This paragraph is intended to be a **CONSTRUCTIVE PETITION FOR EXTENSION OF TIME** in accordance with 37 C.F.R. § 1.136(a)(3).

If the Examiner finds that a telephone conference would further prosecution of this application, she is invited to contact the undersigned at 202-835-7553.

Respectfully submitted,

MILBANK, TWEED, HADLEY & McCLOY LLP

By:


Einar Stole
Registration No., 47,272

Customer No. 38647
MILBANK, TWEED, HADLEY & McCLOY LLP
1825 I Street, N.W.,
Suite 1100
Washington, DC 20006
Tel. No. (202) 835-7500
Fax No. (202) 835-7586